

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSEPH MARTIN NORTON, III,

Plaintiff,

v.

WILLIAM HUTCHINGSON, *et al.*,

Defendants.

Case No. 2:23-cv-00611-RFB-MDC

ORDER on Plaintiff's Application to
Proceed IFP (ECF No. 19); and

ORDER on Motions for Appointment of
Counsel (ECF Nos. 32, 33).

This action began with a pro se civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. Plaintiff has submitted an application to proceed *in forma pauperis*. (ECF No. 19). Based on the financial information provided, the Court finds that Plaintiff is unable to prepay the full filing fee in this matter.

The Court entered a screening order on Plaintiff's Third Amended Complaint (TAC) on September 30, 2024. (ECF No. 28). The screening order imposed a 90-day stay and the Court entered a subsequent order in which the parties were assigned to mediation by a court-appointed mediator. (ECF Nos. 28, 30). A settlement was not reached at the mediation. (ECF No. 31). Immediately subsequent to the mediation, Plaintiff filed two motions for appointment of counsel. (ECF Nos. 32, 33) citing his lack of education and legal knowledge.

A litigant does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C. § 1915(e)(1), "[t]he court may request an attorney to represent any person unable to afford counsel." However, the court will appoint counsel for indigent civil litigants only in "exceptional circumstances." *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983 action). "When determining whether 'exceptional circumstances' exist, a court must consider 'the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity

1 of the legal issues involved.” *Id.* “Neither of these considerations is dispositive and
2 instead must be viewed together.” *Id.*

3 In the instant case, the Court does not find exceptional circumstances that warrant
4 the appointment of counsel. Plaintiff’s lack of education and access to legal resources is
5 a common obstacle faced by inmates. *See Baker v. Macomber*, No. 2:15-CV-00248-TLN-
6 AC, 2020 WL 1182495, at *1 (E.D. Cal. Mar. 12, 2020) (finding that “[c]ircumstances
7 common to most prisoners, such as lack of legal education and limited law library access,
8 do not establish exceptional circumstances that warrant a request for voluntary
9 assistance of counsel”). Further, Plaintiff has demonstrated the ability to articulate his
10 claims beyond the screening process. The Court denies the motions for appointment of
11 counsel without prejudice.

12 For the foregoing reasons, **IT IS ORDERED** that:

13 1. Plaintiff’s application to proceed *in forma pauperis* (ECF No. 19) is
14 **GRANTED**. Plaintiff shall not be required to pay an initial installment of the filing fee. In
15 the event that this action is dismissed, the full filing fee must still be paid pursuant to 28
16 U.S.C. § 1915(b)(2).

17 2. The movant herein is permitted to maintain this action to conclusion without
18 the necessity of prepayment of any additional fees or costs or the giving of security
19 therefor.

20 3. Pursuant to 28 U.S.C. § 1915, the Nevada Department of Corrections will
21 forward payments from the account of **Joseph Martin Norton, III, #76889**, to the Clerk
22 of the United States District Court, District of Nevada, 20% of the preceding month’s
23 deposits (in months that the account exceeds \$10.00) until the full \$350 filing fee has
24 been paid for this action. The Clerk of the Court will send a copy of this order to the
25 Finance Division of the Clerk’s Office. The Clerk will send a copy of this order to the
26 attention of **Chief of Inmate Services for the Nevada Department of Corrections** at
27 **formapauperis@doc.nv.gov**.
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1 4. The Clerk of the Court shall electronically **SERVE** a copy of this order and
2 a copy of Plaintiff's TAC (ECF No. 25) on the Office of the Attorney General of the State
3 of Nevada by adding the Attorney General of the State of Nevada to the docket sheet.
4 This does not indicate acceptance of service.

5 5. Service must be perfected within ninety (90) days from the date of this order
6 pursuant to Fed. R. Civ. P. 4(m).

7 6. Subject to the findings of the screening order (ECF No. 28), within twenty-
8 one (21) days of the date of entry of this order, the Attorney General's Office shall file a
9 notice advising the Court and Plaintiff of: (a) the names of the defendants for whom it
10 accepts service; (b) the names of the defendants for whom it does not accept service,
11 and (c) the names of the defendants for whom it is filing the last-known-address
12 information under seal. As to any of the named defendants for whom the Attorney
13 General's Office cannot accept service, the Office shall file, under seal, but shall not serve
14 the inmate Plaintiff the last known address(es) of those defendant(s) for whom it has such
15 information. If the last known address of the defendant(s) is a post office box, the Attorney
16 General's Office shall attempt to obtain and provide the last known physical address(es).

17 7. If service cannot be accepted for any of the named defendant(s), Plaintiff
18 shall file a motion identifying the unserved defendant(s), requesting issuance of a
19 summons, and specifying a full name and address for the defendant(s). For the
20 defendant(s) as to which the Attorney General has not provided last-known-address
21 information, Plaintiff shall provide the full name and address for the defendant(s).

22 8. If the Attorney General accepts service of process for any named
23 defendant(s), such defendant(s) shall file and serve an answer or other response to the
24 TAC (ECF No. 25) within sixty (60) days from the date of this order.

25 9. Plaintiff shall serve upon defendant(s) or, if an appearance has been
26 entered by counsel, upon their attorney(s), a copy of every pleading, motion or other
27 document submitted for consideration by the Court. If Plaintiff electronically files a
28 document with the Court's electronic-filing system, no certificate of service is required.

1 Fed. R. Civ. P. 5(d)(1)(B); Nev. Loc. R. IC 4-1(b); Nev. Loc. R. 5-1. However, if Plaintiff
2 mails the document to the Court, Plaintiff shall include with the original document
3 submitted for filing a certificate stating the date that a true and correct copy of the
4 document was mailed to the defendants or counsel for the defendants. If counsel has
5 entered a notice of appearance, Plaintiff shall direct service to the individual attorney
6 named in the notice of appearance, at the physical or electronic address stated therein.
7 The Court may disregard any document received by a district judge or magistrate judge
8 which has not been filed with the Clerk, and any document received by a district judge,
9 magistrate judge, or the Clerk which fails to include a certificate showing proper service
10 when required.

11 10. This case is no longer stayed.

12 11. Plaintiff's motions for appointment of counsel (ECF Nos. 32, 33) are denied
13 without prejudice.

14 DATED THIS 20th day of December 2024.

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17 UNITED STATES MAGISTRATE JUDGE
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